

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District HAWAII
Name of Movant ROBERT LUM	Prisoner No. 95160-022	Case No. 03-00560-01
Place of Confinement FEDERAL CORRECTIONAL INSTITUTION SHERIDAN, OREGON		
UNITED STATES OF AMERICA		V. ROBERT LUM (name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF HAWAII
2. Date of judgment of conviction December 2, 2005
3. Length of sentence 240 months
4. Nature of offense involved (all counts) Title 21 §§841 and 841(b) (1) (A), Title 21
§846 with enhancements Title 21 §§ 851 and 841(b)

5. What was your plea? (Check one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one) **N/A**

(a) Jury

(b) Judge only
7. Did you testify at the trial?
Yes No Testified at the motion to withdraw the guilty plea.
8. Did you appeal from the judgment of conviction?
Yes No

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9. If you did appeal, answer the following:

(a) Name of court THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(b) Result AFFIRMED

(c) Date of result February , 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(D) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (i) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law): Mr. Emmett E. Lee Loy provided ineffective assistance of counsel, when he allowed the government to partially read off the colloquy rights under F.R. Cr.P. Rule 11(c).

B. Ground two: Mr. Lee Loy violated defendant's due process rights

Supporting FACTS (state *briefly* without citing cases or law): Mr. Lee Loy did not have the court admonish all of the colloquy rights under F.R.Cr.P. Rule 11(c).

C. Ground three: The United States District Court for the District of Hawaii violated defendant's due process rights.

Supporting FACTS (state *briefly* without citing cases or law): The District Court did not completely admonish all of the colloquy rights to where the defendant knowingly understood all of his rights under F.R. Cr.P. Rule 11(c).

D. Ground four: Witnesses provided false information to acquire the indictment

Supporting FACTS (state briefly without citing cases or law): Donald Morton and the F.B.I. provided false information to get the intrapment sting to arrest defendant.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: This defendant did not, and still does not understand all proceedings and procedures without a whole lot of help.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing CLAYTON KIMOTO

(b) At arraignment and plea EMMETT LEE LOY (change of plea)

(c) At trial CYNTHIA A. KAGIWADA (motion to withdraw guilty plea)

(d) At sentencing CYNTHIA A. KAGIWADA

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(e) On appeal, CYNTHIA A. KAGIWADA

(f) In any post-conviction proceeding none

(g) On appeal from any adverse ruling in a post-conviction proceeding none

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11/26/07
(date)



Signature of Movant